

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RUTHIE L. WINDSOR,

Plaintiff,

v.

FRANCIS J. HARVEY, Secretary of the
Army,

Defendant.

Case No. 01:05-CV-1196-B

ANSWER

Comes now the Defendant, Francis J. Harvey, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and answers the Plaintiff's complaint as follows:

GENERAL DENIAL

Any fact not expressly admitted herein is hereby denied.

First Defense

The Defendant denies the allegations of discrimination in the Plaintiff's complaint and demands strict proof of all matters contained therein.

Second Defense

The Plaintiff's complaint fails to state a claim upon which relief can be granted.

Third Defense

The Plaintiff has failed to timely exhaust his administrative remedies in this matter.

Fourth Defense

The circumstances presented in the Plaintiff's complaint do not present a claim of discrimination under Title VII.

Fifth Defense

The Plaintiff's injuries and damages are due in part to his own conduct and therefore he is estopped from bringing an action in this cause.

Sixth Defense

The Plaintiff has failed to prove a prima facie case of discrimination.

Seventh Defense

The Court is without jurisdiction to entertain all of the Plaintiff's claims.

Eighth Defense

The Defendant specifically reserves the right to add additional defenses of which it becomes aware during the progression of discovery.

Ninth Defense

The Defendant had legitimate business reasons for all of its actions.

Tenth Defense

Answering specifically the numbered paragraphs of the Complaint, utilizing the same paragraph numbering, the Defendant admits, denies, and otherwise answers as follows:

I. Jurisdiction

1. Paragraph 1 consists of conclusions of law for which no answer is required. To the extent an answer is required Defendant admits that 42 U.S.C. §2000e-5 provides for a waiver of sovereign immunity for claims of discrimination in federal employment based on color, race, and sex.

2. Paragraph 2 consists of conclusions of law for which no answer is required. To the extent an answer is required Defendant admits that the Plaintiff filed suit 91 days after the EEOC-OFO issued it's final decision containing Plaintiff's rights to judicial appeal rights.

II. Parties

3. Defendant admits.

4. Paragraph 4 contains conclusions of law to which no answer is required. To the extent an answer is required Defendant admits it has more than 15 employees.

III. Causes of Action

Count I: Race Discrimination

4. [sic] Paragraph 4 does not contain an assertion of fact.

5. Defendant admits.

6. Defendant admits.

7. Defendant denies the allegations in Paragraph 7.

8. Defendant denies the allegations in paragraph 8.

Count II: Sex Discrimination

9. Paragraph 9 does not contain an assertion of fact.

10. Defendant admits.

11. Defendant denies the allegations in paragraph 11.

12. Defendant denies the allegations in paragraph 12.

13. Defendant denies the allegations in paragraph 13.

Count III: Retaliation

14. Paragraph 14 does not contain an assertion of fact.

15. Defendant denies the allegations in paragraph 15.

16. Defendant denies the allegations in paragraph 16.

17. Defendant denies the allegations in paragraph 17.

18. Defendant denies the allegations in paragraph 18.

IV. Prayer for Relief

1 -3. Defendant denies the Plaintiff is entitled to any relief to include injunctive orders, damages, costs, or fees.

WHEREFORE, premises considered, the complaint is due to be and should be dismissed with Defendant's costs taxed to Plaintiff.

Respectfully submitted this 21st day of February, 2006.

LEURA G. CANARY
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Plaintiff's attorney, Henry L. Penick, Esq.

/s/R. Randolph Neeley
Assistant United States Attorney